

¹ 5 U.S.C. § 8101 *et seq.*

foot, arm, neck, legs, and back when she fell on a wet surface while in the performance of duty. The employing establishment advised that the injury had occurred after she had left work for the day and was walking up the stairs to the parking garage. Appellant stopped work on December 21, 2018. OWCP accepted the claim for a sprain of an unspecified ligament of the right ankle. It paid appellant wage-loss compensation for total disability on the supplemental rolls from February 4 to April 15, 2019. Appellant returned to her full-time date-of-injury employment on April 15, 2019.

An after visit summary dated May 17, 2019 indicated that Dr. Katherine Clair Shaw, a Board-certified internist, treated appellant on that date for right ankle stiffness.

On June 7, 2019 appellant filed a notice of recurrence (Form CA-2a) for medical treatment and of disability beginning April 17, 2019 causally related to her December 20, 2018 employment injury. She indicated that she had stopped work the evening of June 6, 2019 and that her pay had ceased on June 7, 2019. Appellant related that, after working for three days, she began to experience right ankle pain. She also asserted that she had injured her back when her right ankle slipped. The employing establishment advised that it had not adjusted appellant's regular work duties as a result of her injury.

Appellant submitted physical therapy reports dated June 7, 2019. She also submitted a June 11, 2019 note from a nurse practitioner who indicated that she had been seen for an appointment on that date.

In a development letter dated June 18, 2019, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical information in support of her claim. It noted that she had returned to full-time employment without restrictions on April 15, 2019 and had stopped work on June 6, 2019. OWCP requested that appellant submit an opinion from her physician explaining the relationship between her disability and the accepted injury and how the accepted condition had materially worsened such that she was disabled from employment. It afforded her 30 days to submit the necessary information.

Thereafter, OWCP received after-visit summaries indicating that appellant had received treatment from a nurse practitioner on April 10, 2019 for a right ankle sprain and on May 13, 2019 for right ankle and dental pain.²

In a report dated May 17, 2019, Dr. Shaw noted appellant's history of falling in a garage in December 2018 and her continued complaints of right ankle tightness that improved with stretching. On examination she found no erythema or effusion, but slight pain to palpation of the lateral malleolus and tenderness with range of motion. Dr. Shaw diagnosed right ankle stiffness and recommended physical therapy. She indicated that it was "likely a fairly severe ankle sprain with prolonged recovery" and referred appellant for an orthopedic evaluation.

In a report dated June 17, 2019, Dr. Richard Andrew Schaefer, a Board-certified orthopedic surgeon, obtained a history of appellant falling twice in the parking lot after work in

² Appellant also submitted physical therapy reports dated June and July 2019.

December 2018.³ The next day, her right ankle was swollen. Dr. Schaefer noted that appellant complained of “chronic stiffness and giving way” and also had some symptoms in the left lower extremity. He diagnosed bilateral ankle pain of unspecified chronicity and chronic right ankle pain. Dr. Schaefer ordered a magnetic resonance imaging (MRI) scan.

In an undated statement received by OWCP on June 25, 2019, appellant advised that, while walking back to her desk on April 17, 2019, she had experienced swelling, pain, and stiffness in her ankle. She related that she sought medical treatment two days later and was given days off work and a referral for physical therapy.

By decision dated July 22, 2019, OWCP found that appellant had not established a recurrence of disability causally related to her accepted employment injury. It noted that she remained entitled to medical benefits for her accepted condition.

In a note dated July 29, 2019, Dr. Shaw advised that she had evaluated appellant on May 17, 2019 and referred her to an orthopedic surgeon.

On July 30, 2019 appellant requested reconsideration.

By decision dated October 25, 2019, OWCP denied modification of its July 22, 2019 decision.

In a report dated January 27, 2020, Dr. Schaefer indicated that he had evaluated appellant for right ankle pain on June 17, 2019 and obtained a history of her falling twice in the parking lot after work. He noted that her right ankle had improved with physical therapy though she had continued stiffness. Dr. Schaefer diagnosed improved symptoms after a right ankle injury, and possible posterior tibial talar arthritis with possible prior posterior malleolus trauma. He advised that appellant could perform activities of daily living avoiding high heels and periodically standing and stretching.

On February 3, 2020 appellant requested reconsideration.

By decision dated May 1, 2020, OWCP denied modification of its October 25, 2019 decision.

In a report dated July 8, 2020, Dr. Schaefer indicated that he had initially evaluated appellant on June 17, 2019. He provided his review of the records and his examination findings. Dr. Schaefer noted that he had referred appellant for an MRI scan of the right ankle, but that it was not performed. He related that he did not see appellant again until January 13, 2020 at which time she advised that her ankle had improved to 75 percent of normal. Dr. Schaefer indicated that an x-ray revealed “continued irregularity of the posterior tibial lip possibl[y] consistent with prior subtle fracture.” He diagnosed a “possible subtle posterior right distal tibia fracture as described in the radiology reports and/or sprain after [a] reported fall in the garage at work in December 2018. She reported persistent symptoms for several months and received multiple

³ The record also contains an after-visit summary form, dated June 17, 2019, noting that appellant had received treatment from Dr. Schaefer on that date.

sessions of physical therapy.” Dr. Schaefer again noted that he had only evaluated appellant on June 17, 2019 and January 13, 2020.

On July 13, 2020 appellant requested reconsideration.

By decision dated November 5, 2020, OWCP denied modification of its May 1, 2020 decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.⁴ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee’s physical limitations and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee’s physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.⁵

OWCP’s procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.⁶

OWCP’s procedures discuss the evidence necessary if recurrent disability for work is alleged within 90 days of return to duty.⁷ The focus is on disability rather than causal relationship of the accepted condition to the employment injury.⁸

The Board has held that, if recurrent disability from work is claimed within 90 days or less from the first return to duty, the attending physician should describe the duties, which the employee cannot perform, and demonstrate objective medical findings that form the basis for the renewed disability from work.⁹

⁴ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

⁵ *Id.*

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *R.E.*, Docket No. 20-0421 (issued May 17, 2021); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

⁷ *Id.* at Chapter 2.1500.5(a) (June 2013); *see also K.D.*, Docket No. 19-0628 (issued November 5, 2019); *B.R.*, Docket No. 18-0339 (issued January 24, 2019).

⁸ *Id.*

⁹ *M.H.*, Docket No. 19-1552 (issued February 2, 2021); *A.B.*, Docket No. 18-0978 (issued September 6, 2019); *J.F.*, 58 ECAB 124 (2006).

ANALYSIS

The Board finds that the case is not in posture for decision.

Initially, the Board notes that appellant alleged a recurrence of the need for medical treatment beginning April 17, 2019 and a recurrence of total disability beginning June 7, 2019. As OWCP noted in its July 22, 2019 decision, however, she remained entitled to medical treatment for her accepted work injury. Consequently, the issue is whether appellant sustained a recurrence of disability beginning June 7, 2019.

OWCP's procedures provide that, in cases where recurrent disability from work is claimed within 90 days or less from the first return to duty, the claimant is not required to produce the same evidence as for a recurrence claimed long after apparent recovery and return to work.¹⁰ In cases where recurring disability from work is claimed within 90 days or less from the first return to duty, the focus is on disability rather than causal relationship.¹¹ The attending physician should describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for the renewed disability from work.¹²

Appellant stopped work on December 21, 2018 and returned to her date-of-injury employment on April 15, 2019. She stopped work again on June 7, 2019. As appellant claimed a recurrence of disability within 90 days of her first return to duty, OWCP should have developed and decided the claim under the proper recurrence standard, emphasizing disability rather than causal relationship.¹³ However, the June 18, 2019 OWCP development letter improperly instructed her to provide medical evidence in accordance with the standard for a recurrence of disability claim after 90 days of her return to duty, which required that she establish a change in her medical condition.¹⁴

OWCP's procedures provide that OWCP is responsible for requesting evidence.¹⁵ Its procedures further provide that the claims examiner should contact the claimant in writing to obtain evidence and should specifically request the information needed, tailored to the specifics of the individual case.¹⁶ In this instance, OWCP improperly developed appellant's claim solely under the standard for a recurrence of disability claim after 90 days from return to duty.¹⁷ As she failed to receive the proper guidance from OWCP regarding the specific evidence required to establish a recurrence claim within 90 days of her return to duty, the Board finds that this case must be

¹⁰ *Supra* note 6 at Chapter 2.1500.5(a); *see R.W.*, Docket No. 17-0720 (issued May 21, 2018).

¹¹ *Id.* at Chapter 2.1500.5(b) (June 2013); *K.R.*, Docket No. 19-0413 (issued August 7, 2019).

¹² *Id.*; *see A.C.*, Docket No. 17-0384 (issued September 11, 2017).

¹³ *Id.*; *see M.H.*, *supra* note 9.

¹⁴ *Id.* at Chapter 2.1500.6 (June 2013).

¹⁵ *Id.* at Chapter 2.800.4(c)(2) (June 2011).

¹⁶ *Id.* at Chapter 2.800.5; *see also V.R.*, Docket No. 16-1167 (issued December 22, 2016).

¹⁷ *M.H.*, *supra* note 9.

remanded for further development.¹⁸ Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 29, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ *Id.*